91-1750

Supreme Court, U.S.
FILED
MAY 4 1992
OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

ALABAMA,

PETITIONER,

V.

COREY D. MATTHEWS,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

JAMES H. EVANS
ALABAMA ATTORNEY GENERAL

*JAMES B. PRUDE
ASSISTANT ALABAMA ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
Alabama State House
11 South Union Street
Montgomery, Alabama 36130
(205) 242-7300

*ATTORNEY OF RECORD

40

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should grant certiorari and overrule the holding of the Supreme Court of Alabama which misapplied federal Constitutional law by holding Respondent's confessions to be involuntary even though the improper inducement offered to make the statements was clearly and specifically withdrawn before the confessions where given and the confessions were given without any expectation of a promise or reward?

2. As a corollory issue, did the Supreme Court of Alabama misapply federal Constitutional law in holding that the state investigators' statement that "the prosecutor and judge would be notified of [Respondent's] cooperation" was sufficient to render the confessions involuntary where Respondent made no self-incriminating statement at that time but confessed only after all deals had been withdrawn and after Respondent had been informed that his alibi witnesses had not supported his story?

PARTIES

The caption contains the names of all the parties to the proceedings in the court below.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED.....	i
THE PARTIES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF CASES.....	iv
TABLE OF OTHER AUTHORITIES...	vi
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION....	1
CONSTITUTIONAL PROVISIONS INVOLVED.....	4
STATEMENT OF THE CASE.....	4
PROCEEDINGS BELOW.....	4
THE FACTS.....	6
REASONS FOR GRANTING THE WRIT.....	12
CONCLUSION.....	18
APPENDIX.....	21

TABLE OF CASES

PAGE(S)

Brams v. United States,
168 U.S. 532, 185
& 183, 42 L.Ed.2d
568 (1897)..... 15

Coleman v. Thompson,
111 S.Ct. 2546
(1991)..... 3

Eakes v. State,
387 So.2d 855
(Ala. Cr. App.
1978)..... 1

Ex Parte Johnson,
522 So.2d 230
(Ala. 1988)..... 12

Luttrell v. State,
551 So.2d 1126
(Ala. Cr. App. 1989)..... 2

Malloy v. Hogan,
378 U.S. 1, 84
S.Ct. 1489, 12
L.Ed. 653 (1964)..... 2

Michigan v. Long,
463 U.S. 1032,
103 S.Ct. 3469,
77 L.Ed.2d 1201
(1983)..... 2

Miranda v. Arizona,
384 U.S. 436,
86 S.Ct. 1602,
16 L.Ed.2d 694
(1966)..... 12

Oregon v. Elstad,
470 U.S. 298,
105 S.Ct. 1285,
84 1.Ed.2d (1985)..... 13

TABLE OF CASES (CONTINUED)

PAGE(S)

Schneckloth v. Bustamonte,
412 U.S. 218,
93 S.Ct. 2041,
36 L.Ed.2d 854 (1973)..... 2

United States v. Fraction,
795 F.2d 12
(3rd Cir. 1986)..... 16

United States v. Nash,
910 F.2d 749
(11th Cir. 1990)..... 16

U.S. v. Cone,
354 F.2d 119
(2d Cr. 1964)..... 16

U.S. v. Fera,
616 F.2d 590
(1st Cir. 1980)..... 16

U.S. v. Glasglow,
451 F.2d F.2d
557 (9th Cir.
1971)..... 16

U.S. v. Hart,
619 F.2d 325
(4th Cir. 1980)..... 16

U.S. v. Posey,
611 F.2d 1389
(5th Cir. 1980)..... 16

U.S. v. Springs,
460 F.2d 1344
(7th Cir. 1972)..... 16

Williams v. Johnson,
845 F.2d 906
(11th Cir. 1988)..... 16

TABLE OF OTHER AUTHORITIES

PAGE(S)

28 U.S.C.,

§1257(a)..... 1

Code of Alabama, (1975),

13A-8-41..... 4

OPINIONS BELOW

1. The opinion of the Supreme Court of Alabama reversing Respondent's conviction is not yet reported, but is reproduced as Appendix A to this petition.

JURISDICTION

The judgment of the Supreme Court of Alabama which is sought to be reviewed was rendered on February 7, 1992. This Court has jurisdiction under 28 U.S.C. §1257(a), as amended (by Public Law 100-352) on June 27, 1988.

Although the Alabama Supreme Court, in rendering the opinion in the instant case, relied mainly only state authorities, it is clear that the state authorities themselves relied upon the United States Supreme Court's interpretation of the Fifth Amendment. For example, the State Court relied upon Eakes v. State, 387 So.2d 855 (Ala. Cr. App. 1978) to hold that a "confession must be free and

voluntary and cannot be the result of any direct or implied promise, however slight." Eakes relied upon Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed. 653 (1964). The state court also relied upon Luttrell v. State, 551 So.2d 1126 (Ala. Cr. App. 1989), which in turn relied upon Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). Under these circumstances, the United States Supreme Court has jurisdiction to consider the questions presented in this petition even though the State Court's opinion only relies upon State court authorities.

In Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), the court held that "[where] a state court decision fairly appears to rest primarily on federal law, or to be interwoven with federal law, and when the adequacy and independence of any

possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed the federal law required it to do so." 77 L.Ed.2d at 1214. The court also stated that it would not undertake review only if the state court decision clearly and expressly indicates that it is based upon "bona fide separate, adequate and independent [state] grounds". Id at 1214. This holding of Michigan v. Long was recently re-affirmed in Coleman v. Thompson, 111 S.Ct. 2546 (1991).

There is no question that the State Court was applying federal constitutional standards when it decided the appeal in the instant case. Since the state court wrongly decided a substantial federal issue, this Court should accept jurisdiction to correct the state court's ruling.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V (in pertinent part)

...; nor shall [any person] be compelled in any criminal case to be a witness against himself....

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

The Respondent, Corey D. Matthews, was indicted on April 13, 1990, by the Grand Jury of Covington County, Alabama, for two cases of robbery in the First Degree of a Pizza Hut in violation of 13A-8-41, Code of Alabama, (1975) as amended [Clerk's Record, Page 1, (hereinafter referenced to as CR.)] $400 was allegedly taken in the Robberies [CR-1]. A warrant for his arrest was executed and he was arrested on the indictment on April 17, 1990 [CKR-3]. Respondent was also later indicted for Theft of Property and for Burglary Third Degree of C. Mini Mart. On January 30, 1990,

prior to the indictments, Respondent was taken to the county jail and interviewed approximately four times [State Record, Page 13, 14, (hereinafter referenced to as SR.)]. The interviews were taped and Respondent confessed to the crimes [SR-14].

On September 12, 1990, a suppression hearing was held on the confessions before the Honorable Jerry E. Stokes [R-1]. The motion to suppress the confessions were denied [SR-114].

Respondent then withdrew his not guilty plea and entered a plea of guilty to all four charges and the Circuit Court allowed Respondent to reserved the right to appeal from the adverse rulings on the motion to suppress [SR-115, 118].

On the two Robbery charges, the court sentenced Respondent to a term of twenty (20) years on one charge and fifteen (15) years on the other charge [SR-113, 135]. On the

Burglary third degree charge and theft of property second degree charge, the Respondent received four (4) years to run concurrent with the Robbery convictions [SR-138].

The Alabama Court of Criminal Appeals affirmed the convictions without opinion on June 28, 1991. However, on November 19, 1991, the Supreme Court of Alabama granted Respondent's Petition For Writ of Certiorari and on February 7, 1992, the Court reversed the convictions and remanded the cases back to the Circuit Court of Covington County.

B. STATEMENT OF THE FACTS

On January 30, 1990, Respondent was taken into custody and interviewed by Investigators Porter Harris and Tamala Odom of the Covington County District Attorney's Office and Investigator Richard White of the Opp, Alabama Police Department. At least three separate interviews were conducted on this day and a fourth interview was conducted

the following day [SR-13, 14]. The first interview which began at 6:45 p.m. continued until 7:50 p.m. and was taped [SR-14, 15]. During this interview, the Respondent was told of the possibility of boot camp if he cooperated with them [SR-16]. Respondent was also told that the if he cooperated, the cooperation would be communicated to the District Attorney and the Judge:

> "Q. Do you recall Ms. Odom making this statement, and I'm quoting from the --"Let me explain something to you," her talking to Cory, "I'm not the investigator for this department, I'm the investigator for the District Attorney Cory Matthews cooperated with me or I can go back and tell the District Attorney that Cory Matthews did not cooperate with me. That's right. I have that option, Cory"?
>
> A. Yes, sir, I recall that.
>
> Q. Okay. Do you recall Mr. White saying something to Cory about -- the meat of the statement was, we might cut you a deal?

A. I can't remember if I was in the room at that time or not, but I do recall listening to it on the tape.

Q. Okay. And do you recall Mrs. Odom saying to Cory, "You have got an opportunity right here to tell us what you know. Cory, it could make a lot of difference for you"?

A. There again, on that particular statement, I do recall listening to it on the tape, but I can't remember if I was in the room at the time or not, because I was in and out of the room, but I do recall hearing it on tape.

Q. Okay. And finally, do you recall Ms. Odom saying "You know there's two ways to go about things. If you go about it and you don't cooperate and the judge knows you didn't and the District Attorney knows you didn't or you turn around and you did cooperate." Do you recall her saying that?

A. i recall hearing it on the tape. I can't truthfully say that I was in the room at the time, but I do recall listening to it on the tape, yes, sir.

Q. On the tape that's in question?

A. Yes, sir.

Q. The first interview on January the 30th?

A. Yes, sir.

[SR-26, 27]

After the first interview ended, Investigator Harris called the District Attorney to determine if boot camp could be offered to Respondent and was informed by the District Attorney that no promises of any kind could be offered to Respondent [SR-16]. Investigator Harris then informed Respondent that they could not offer him boot camp or make any other promise in exchange for a statement [SR-17].

In a conversation prior to the second taped interview, the investigators informed Respondent that they had interviewed his alibi witnesses and that the alibi witnesses had not confirmed his story. Respondent then agreed to talk to them and to tell "the truth about everything." [SR-17, 18].

The second taped interview began around 9:20 p.m., about one and one half hours after the first interview had ended]SR-22]. During this interview, Respondent gave confessions to nine different cases, including the present robbery convictions [SR-69, 70].

However, the investigators testified that their statement about cutting a deal for Respondent to get boot camp was in response to Respondent's inquiry about what good it would do for him [Respondent] to tell the investigators about other burglaries that had occurred in Opp [SR-28, 29], and that their statement was not for the purpose of getting Respondent to confess to the Pizza Hut Robberies [SR-28, 29]. Respondent did not make any incriminating statements during this interview. The tapes of all four interviews were introduced into evidence at the suppression hearing [R-90, 91, 92]. The state trial transcript does not contain any testimony about the purpose of the final two

interviews, or whether any additional confessions were made in these final interviews. From the course of evidence at the suppression hearing, it appears that only the content of first two interviews are at issue.

REASON FOR GRANTING THE WRIT

I.

THIS COURT SHOULD GRANT CERTIORARI TO CORRECT THE ALABAMA SUPREME COURT'S HOLDING THAT RESPONDENT'S CONFESSION HAD BEEN INVOLUNTARILY OBTAINED BY INVESTIGATORS BY OFFERING RESPONDENT THE POSSIBILITY OF BOOT CAMP AND OFFERING TO LET THE PROSECUTOR AND THE TRIAL JUDGE KNOW OF HIS COOPERATION WHERE RESPONDENT DID NOT CONFESS DURING THAT FIRST INTERVIEW AND THE OFFER WAS WITHDRAWN PRIOR TO THE SECOND AND SUBSEQUENT INTERVIEWS WHERE THE CONFESSIONS WERE OBTAINED.

The basic issue presented in this case is whether the Supreme Court of Alabama improperly voided Respondent's confessions by holding, in essence, that Respondent's confessions were obtained through either direct or indirect promises in violation of Ex Parte Johnson, 522 So.2d 230 (Ala. 1988), a state case based upon this Court's decision in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The Alabama Supreme Court's decision is erroneous under the Fifth Amendment of the United States

Constitution because the confessions were not made during that first interview when the improper inducements were offered, but rather were made during a subsequent interview after Respondent had been informed that the investigators could not offer him anything in exchange for his statement and after the offer of boot camp instead of prison had been specifically and explicitly withdrawn.

In Oregon v. Elstad, 470 U.S. 298, 105 S.Ct. 1285, 84 1.Ed.2d (1985), this Court clearly and expressly held that even though the first confession was declared involuntary because it was obtained before the Miranda warning were given, a second confession which is voluntarily given after a defendant has been properly warned of his Miranda rights would clearly be admissible in evidence against him. The Court in Elstad stated:

> "there is no warrant for presuming coercive effect where the suspect's initial inculpatory statement, though technically in violation of Miranda, was voluntary. The relevant inquiry is whether,

> in fact, the second statement was also voluntarily made. As in any such inquiry, the finder of fact must examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements. The fact that a suspect chooses to speak after being informed of his rights is, of course, highly probative. We find that the dictates of Miranda and the goals of the Fifth Amendment proscription against use of compelled testimony are fully satisfied in the circumstances of this case by barring use of the unwarned statement in the case in chief. No further purpose is served by imputing "taint" to subsequent statements obtained pursuant to a voluntary and knowing waiver. We hold today that a suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confession after he had been given the requisite Miranda warnings."

L.Ed.2d at 238.

The Alabama Supreme Court's decision violates the clear intent of Elstad because it is clear that the investigators' offer of boot

camp in exchange for the Respondent's statement, made in the first interview, had been expressly withdrawn prior to the beginning of the second and subsequent interviews wherein the statement was given. The Alabama Supreme Court's failure to hold the confession taken during the second, or subsequent interviews valid under Elstad is obvious constitutional error.

Secondly, the Supreme Court of Alabama erred in invalidating the confessions on the ground that the investigators'statements to Respondent that they could either let the prosecutor and trial judge know if he cooperated with them or let them know that he did not cooperate with them constituted an implicit statement that it would be difficult for him if he did not come forward with information and would be better for him if he did. This holding is constitutional error because those statements did not violate Brams v. United States, 168 U.S. 532, 185 & 183, 42 L.Ed.2d 568 (1897). In Brams, the

court stated:

> "[A] confession, in order to be admissible, must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however, slight, nor by the exertion of any improper influence...." (Emphasis added).

However, lower federal courts have consistently held that statements to the effect that "the prosecutor and the Judge would be notified of the cooperation" do not contain implied promise of immunity or leniency and do not render a confession involuntary. See, e.g. United States v. Nash, 910 F.2d 749 (11th Cir. 1990); Williams v. Johnson, 845 F.2d 906 (11th Cir. 1988). United States v. Fraction, 795 F.2d 12 (3rd Cir. 1986); U.S. v. Fera, 616 F.2d 590 (1st Cir. 1980); U.S. v. Cone, 354 F.2d 119 (2d Cr. 1964); U.S. v. Hart, 619 F.2d 325 (4th Cir. 1980); U.S. v. Posey, 611 F.2d 1389 (5th Cir. 1980); U.S. v. Springs, 460 F.2d 1344 (7th Cir. 1972); U.S. v. Glasglow, 451 F.2d F.2d 557 (9th Cir. 1971). Since the inquiry under Brams is whether the confession was obtained

as the result of a promise, the decision of the Alabama Supreme Court to hold the confessions involuntary constitutes constitutional error because no promise sufficient to render the confessions invalid was ever made by the investigators.

CONCLUSION

This Court should grant certiorari and correct the Supreme Court of Alabama's erroneous failure to apply Elstad in order to affirm the validity of the confessions where the improper inducement offered during the first interview was withdrawn before the confessions were made during one of the subsequent interviews. This Court should also correct that portion of the Supreme Court of Alabama's decision which held that the investigators' statement that they would notify the Judge and Prosecutor of Respondent's cooperation constituted an implied promise and leniency sufficient to render the confession invalid.

Respectfully submitted,

JAMES H. EVANS
ATTORNEY GENERAL
BY:

_____

JAMES B. PRUDE
ASSISTANT ATTORNEY GENERAL
OF ALABAMA

APPENDIX

SUPREME COURT OF ALABAMA

1901837

Ex parte Corey D. Matthews

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS

(RE: Corey D Mathews

v.

State)

(Covington Circuit Court,
CC-90-69b, 90-70a, 90-74)

MADDOX, JUSTICE.

Corey Matthews pleaded guilty to robbery, burglary, and theft of property. Before pleading guilty, Matthews moved to suppress certain incriminating statements that he made to police officers and an investigator for the district attorney's office. At the suppression hearing, the record shows that the following statements were made to Matthews before he made his incriminating statements:

1) "There's a possibility that being an accomplice and not actually doing the deed, you might get boot camp."

2) "Let me explain something to you, I'm not the investigator for this department, I'm the investigator for the district attorney. I can go back and tell the district attorney, Corey Matthews cooperated with me or I can go back and tell the district attorney that Corey Matthews did not cooperate with me. That's right, I have that option Corey."

3) "We might cut you a deal."

4) "You've got an opportunity right here ... to tell us what you know. Corey, it could make a lot of difference for you."

5) "You know there's two ways to go about things, either you go about it and you don't cooperate and the judge knows that you didn't and the district attorney knows you didn't or you turn around and you did cooperate, you know."

The trial court denied the motion and Matthews pleaded guilty, reserving his right to appeal the denial of his motion to suppress the incriminating statements. Matthews appealed to the Court of Criminal Appeals, claiming that the incriminating statements that he made to the officers and the

investigator were involuntary and inadmissible because, he argued, he had made them under the impression that the State would go easy on him if he confessed or hard on him if he did not. The Court of Criminal Appeals affirmed, with an unpublished memorandum, and later denied Matthews's application for rehearing. We granted certiorari review and we reverse the judgment of the Court of Criminal Appeals, concluding that the statements were involuntary and, therefore, inadmissible.

It is well settled in this Court that "[e]extrajudicial confessions are prima facie involuntary and inadmissible, and [that] the burden is on the State to prove that the confession was made voluntarily." Ex parte Callahan, 471 So.2d 463, 464, (Ala. 1985). See Ex parte Weeks, 531 So.2d 643 (Ala. 1988). A confession is merely an incriminating statement and the law concerning the admissibility of one applies equally to the other. This court stated in Wallace v. State.

290 Ala. 201, 204, 275 So. 2d 634, 636 (1973):

> "[A]ll extra-judicial confessions are presumed to be involuntary and, therefore, are prima facie inadmissible with the onus resting on the prosecution to repel the imputation of undue influence unless the attending circumstances affirmatively disclosthe voluntariness of the confession. Any inducement of profit or benefit held out; any hope engineered or encouraged that the prisoner's case will be lightened, meliorated, or more favorably dealt with if he will confess; either of these is enough to exclude the confession thereby superinduced. Any words spoken in the hearing of the prisoner which may, in their nature, generate fear or hope render it not only proper but necessary that a confession made within a reasonable time afterwards shall be excluded, unless it is shown by clear and full proof that the confession was voluntarily made after all trace of hope or fear had been fully withdrawn or explained away and the mind of the prisoner made as free from fear, intimidation or hope for reward as if no attempt had ever been made to obtain such a confession."

The reasoning behind the exclusion of confessions obtained by the promise of a reward or by a threat was stated in Luttrell v. State, 551 So.2d 1126, (Ala. Cr. App. 1989) as follows:

> "'The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent untrustworthiness. It also turns on the deep rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.'"

551 So. 2d at 1128, quoting Ex parte McCary, 528 So. 2d 1133, 1135 (Ala. 1988).

Matthews and the officers gave conflicting accounts concerning Matthews's motivation to make the incriminating statements. The State argues that Matthews decided to make the statements only after he was told that his alibi witnesses did not confirm his alibi; however, Matthews argues that he decided to make the incriminating statements after the officers suggested that

to do so would be to his benefit. When there is conflicting evidence of the circumstances surrounding an incriminating statement or a confession, it is the duty of the trial judge to determine its admissibility, and if the trial judge decides it is admissible his decision will not be disturbed on appeal "unless found to be manifestly contrary to the great weight of the evidence." Williams v. State, 456 So.2d 852, 855 (Ala. Crim. App. 1984).

> "'The true test of voluntariness of extra-judicial confessions is whether, under all surrounding circumstances, they have been induced by a threat or a promise, express or implied, operating to produce in the mind of the prisoner apprehension of harm or hope of favor; and if so, whether true or false, such confessions must be excluded from the consideration of the jury as having been procured by undue influence.'"

Ex parte Weeks, 531 So.2d at 644, quoting Womack v. State, 281 Ala. 499, 205 So. 2d 579 (1967).

In Wallace, an officer promised the defendant that if he told the truth the officer would discuss his cooperation with the probation officer. This Court found that this statement alone was not enough to render the defendant's statement involuntary. "The statement was neither an express nor implied promise of reward if appellant admitted his guilt .... [The appellant's] remarks were no stronger than to convey the idea to appellant that it would be best or better to tell the truth if he made a statement." Wallace. 290 Ala. at 206, 275 So. 2d at 638. However, the question concerning the voluntariness of a defendant's statement must be decided by reviewing the "totality of the circumstances." Luttrell v. State, 551 So. 2d at 1129 (citing Schneckloth v. Bustamonte, 412 U.S. 218, 227, 93 S.Ct. 2041, 2048, 36 L.Ed.2d 854 (1973); United States v. Recalde, 761 F.2d 1448, 1453 (10th Cir. 1985).

The State argues that Matthews consented to make a statement. The Court of Criminal Appeals in Luttrell noted that there are three factors to be considered in determining whether the State has sustained its burden of proving that a defendant's "consent" was voluntary.

> "'First, there must be clear and positive testimony that the consent was unequivocal and specific. Second, the Government must establish that the consent was given without duress or coercion. Finally, we evaluate those first two standards with the traditional indulgence of the courts against a presumption of waiver of constitutional rights.'"

Luttrell, 551 So.2d at 1129 (quoting Bradley v. State, 494 So.2d 750, 758 (Ala. Cr. App. 1985), in turn quoting United States v. Recalde. 761 F.2d 1448, 1453 (10th Cir. 1985).

The State argues that it was not seeking a confession from Matthews, but was merely seeking any information he had concerning a string of burglaries. However, because the State admits that Matthews was a

"suspect" in these burglaries, this Court concludes from the record that it was indeed seeking a confession from Matthews. The State also argues that while the officers and the investigator for the district attorney may have made the quoted statements to Matthews, they emphasized the fact that they "could not make any promises" and that any hope they instilled in Matthews concerning the possibility of obtaining "boot camp" was withdrawn before he made his statements. This Court acknowledges that there is evidence that, after a conversation with the district attorney, an officer did adequately explain to Matthews that the statement about "boot camp" was made prematurely and that they could no longer offer "boot camp" to him.

Despite the State's withdrawal of the statement about "boot camp", there were still several other questionable statements made to Matthews by the officers. The trial court apparently found that these statements were not the cause of Matthews's incriminating

statements, and that the cause was the fact that his alibi fell through. However, it is well grounded in Alabama law that "'[i]n order to be admissible a confession must be free and voluntary and cannot be the result of any direct or implied promises, however slight." Ex parte Johnson. 522 So. 2d 234, 237 (Ala. 1988) (quoting Eakes v. State, 387 So. 2d 855, 859 (Ala. Cr. App. 1978)). (Emphasis added.)

After reviewing all of these statements made by the officers and the investigator, this Court concludes that the statements "engineered and encouraged" Matthews to think that he would be "more favorably dealt with if he [would] confess." See Wallace, 290 Ala. at 204, 275 So.2d at 636. Therefore, this Court concludes that the finding of the trial court was manifestly contrary to the great weight of the evidence. As a result of the trial court's finding that Matthews's incriminating statements were voluntary and admissible, he pleaded guilty. The statements made to Matthews in this case are prime examples of

statements that entice a suspect into making a confession. Matthews's incriminating statements were not trustworthy, because the statements to him strongly suggested that it would be difficult for him if he did not come forward with information but would be easier for him if he did. Therefore, the Court of Criminal Appeals erred by affirming the judgment of conviction. That court's judgment is reversed and the cause is remanded for the entry of a judgment consistent with this opinion.

REVERSE AND REMANDED WITH INSTRUCTIONS.

Hornsby, C.J., and Almon, Shores, Adams, Steagall, and Ingram, JJ., concur.

Houston, and Kennedy, JJ., dissent.

HOUSTON, JUSTICE (dissenting).

There was undisputed evidence of a deal offered that would have made subsequent incriminating statements involuntary as defined by the cases cited in the majority opinion. However, no incriminating statements were made at that time. The trial court heard disputed ore tenus evidence that all "deals" had been withdrawn prior to Matthews's statements. The incriminating statements that Matthews sought to suppress were made after this. If, in fact, the "deals" had been withdrawn prior to the statements being made, the mere fact that a prior deal had been made would not render the incriminating statements made after the deal was withdrawn involuntary. See Oregon v. Elstad, 470 U.S. 298 (1985). Therefore, the question before the trial court and the Court of Criminal Appeals was whether all "deals" had been

withdrawn before Matthews made the incriminating statements. The trial court found, after hearing ore tenus evidence, that they had been. Our standard of review requires that we affirm unless the trial court's decision was "manifestly contrary to the great weight of the evidence." Williams v. State, 456 So.2d 852, 855 (Ala.Crim.App. 1984). I find that it was not. I would quash the writ; therefore I dissent.

1518q